## IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION

CRIMINAL NO. 1:05CR239

UNITED STATES OF AMERICA	)	
VS.	) ) )	ORDER
EDWARD PORTA	) ) )	

**THIS MATTER** is before the Court on responses from the Government and Defendant to this Court's previous Order concerning restitution, filed August 28, 2007.

At Defendant's sentencing hearing on May 2, 2007, the undersigned deferred the determination of restitution in order to provide the Government an opportunity to submit claims for victims. On June 27, 2007, the Government filed a notice regarding those victims and their respective amounts of restitution. The Government also acknowledged that there were certain defrauded individuals and companies for whom restitution was not being requested due to their complicity in the illegal conduct at issue.

Government's Notice Regarding Restitution, filed June 27, 2007, at 2.

Defendant objected to the Government's notice, contending that "various"

persons or entities listed [in the Government's notice] as 'victims' [were] more appropriately categorized as 'unindicted co-conspirators,' and thus not entitled to restitution." **Defendant's Response to Court's Order Concerning Restitution, filed September 12, 2007, at 1.** 

Title 18 U.S.C. § 3663 provides that "in no case shall a participant in an offense . . . be considered a victim of such offense," such that he or she could be a candidate for restitution. 18 U.S.C. § 3663(a)(1)(A). The Government conceded in its response of August 28, 2007, that the two brothers who owned Triangle Textiles, Ltd., while not criminally culpable in this case, were nonetheless "aware that [Defendant] was reporting on USDA forms one price for cotton and that in actuality the true price was lower." Government's Response to Court's Order Concerning Restitution, filed August 28, 2007, at 2–3.

Based on the motions and responses filed in this case, the Court is of the opinion that Triangle Textiles, Ltd., is not a "victim" under 18 U.S.C. 3663.

IT IS, THEREFORE, ORDERED that the Clerk prepare an Amended Judgment deleting Triangle Textiles, Ltd., and the corresponding amount of \$407,153.20, from the amount of restitution owed by Defendant.

Signed: September 24, 2007

Lacy H. Thornburg United States District Judge